

RECEIVED

DEC 21 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

RECEIVED

DEC 21 1992

FCC - MAIL ROOM

In the Matter of)

Implementation of Section 10 of the)
Cable Consumer Protection and)
Competition Act of 1992)

MM Docket No. 92-258

Indecent Programming and Other Types)
of Material on Cable Access Channels)

Reply Comments of Cambridge Community Television

Irwin Hipsman
Cambridge Community Television
One Kendall Sq. B-400
Cambridge, MA 02139
617-225-2500

No. of Copies rec'd
List A B C D E

0+4

December 18, 1992

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

RECEIVED

DEC 21 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

)

Implementation of Section 10 of the)

Cable Consumer Protection and)

Competition Act of 1992)

)

)

Indecent Programming and Other Types)

of Material on Cable Access Channels)

MM Docket No. 92-258

RECEIVED

DEC 21 1992

FCC - MAIL ROOM

Reply Comments of Cambridge Community Television

Pursuant to the Commissions Notice of Proposed Rulemaking ("NPRM"), Cambridge Community Television ("CCTV") submits these comments on the comments due December 7, 1992 on the proposed regulations implementing the provisions of the Cable Consumer Protection and Competition Act of 1992 ("Act") relating to indecent and obscene programming.

CCTV, founded in 1987 is the independent non-profit corporation providing community access to television services to residents, organizations, and business in Cambridge, MA. CCTV has a 15-year contract with Continental Cablevision. This contract is incorporated into the license issues by the City of Cambridge.

CCTV receives 3% of the gross annual revenues of the Cambridge system to operate 4 community access channels and a television production facility in One Kendall Square, Cambridge. Since CCTV opened in 1988 over \$1,000,000 in free video production services, more than 15,000 hours of programming, and more than 1,500 residents trained in video production. CCTV is recognized as one of the leading access centers in the country.

CCTV did not provide a response to the NPRM due December 7 because our interests were being represented by the Alliance for Community Media. We would also wish to draw the Commissions attention to the comments of the Boston Community Access and Programming Foundation which is located across the river from Cambridge. However, after reading the comments submitted by Continental Cablevision in which CCTV was essentially named in footnote #3, the Board of Directors of CCTV felt that it was their responsibility to reply.

We wholeheartedly agree with the statement by Continental "urging the Commission to adopt a regulatory scheme that minimizes the operators editorial intrusion in access programming so long as their liability is correspondingly minimized. (p.2)" We feel that if producers are going to be given the rights to access cable television channels they, and not the cable operator, should also take the responsibility for their programming.

Although Congress included language requiring the Commission to promulgate regulations to " prohibit the use... for any programming which contains obscene material..." we can not imagine that the Congress wanted to create a de facto banning of live programming or of indecent programming. Nor do we feel that the Congress wishes to stifle access to one of the only media forms available (community access cable) by groups which otherwise have no access to media outlets. Congress is looking for a reasonable solution to a rare occurrence.

We recognize that programming mentioned in the Act creates difficulties, but just because something is difficult does not mean it should be prohibited. There are mechanisms which CCTV has instituted in recognition of difficult programming. For example, we run a disclaimer on programming which may offend a cable viewer. The responsibility is on the shoulders of the producer to flag a difficult program. In addition, any difficult programming is shown as late as possible in our cablecast day. Producers who violate our policies will be suspended from using CCTV's facilities.

Where CCTV disagrees with Continental is in the event that the operator remains liable therefore the "operator must be afforded the discretion to exclude material that the operator reasonably believes to be obscene. And the operator must be permitted to ask for certification regarding a broader category of programming than obscenity--sexually explicit material, for example--so that the operator can review the sexually explicit programs to decide if it reasonably

believes any of it obscene. (p.4-5)"... and.. "1)the cable operator must be permitted to make its own determination..notwithstanding any certification that material is obscene and should be excluded 2) word its certification request in whatever form it desires..."

The cable operator is not the best authority to determine whether or not a program is obscene, sexually explicit, or promoting unlawful conduct (even with the caveat of NPRM footnote 11). It has been difficult enough to define obscenity. What is the definition of sexually explicit or unlawful conduct? Generally, there is not the personnel on the local level sufficiently schooled in the First Amendment to make these decisions. If rulings are based on an operator by operator basis there will be further problems of definition if an operator in one community has different interpretation of the "sexually explicit/unlawful conduct programming" from an operator in an adjacent community.

If the Commission insists that the operator has full liability perhaps a matter should go to an advisory board consisting of producers, citizens, cable operator personnel, access staff, City officials, etc. to make case by case decisions. This would at least afford some level of protection for the operator. The Commission may also want to consider language similar to that in the recent CPB Reauthorization Act which called for the FCC to "promulgate regulations..the broadcasting of indecent programming between 6 a.m. and 10 p.m. on any day by a public television station that goes off the air before midnight."(106 stat.964 public law 102-356, August 26, 1992)

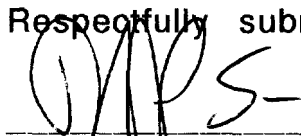
Continental urges the commission to "prevent transforming these problems into a de facto ban on indecent programs." (p.2) We urge the Commission to not allow the operator to transform any regulations into a similar de facto ban on indecent programs. Any attempt to have the cable operator decide whether or not a program is obscene will have detrimental effects on that operator. Will the operator have to devote staff time to pre-screen all programs? The operator will be the judge and jury and have to function in the court of public opinion as well. What a position to be in! If the operator allows the program they are criminally liable, so the operator would take a less lenient view of any program, affording themselves full protection. On the other hand, a program in the grey area of interpretation which is prohibited will create an uproar around censorship so that the operator loses either way.

As to the two programs mentioned in footnote 3. It would not be true to state that sexually explicit programs have never been shown on any access channel. However, CCTV's research has indicated that election related programming have caused far more difficulties than obscene programming. Having seen both of the programs mentioned in their entirety, CCTV would argue that neither is obscene. Of the more than 600 systems owned by Continental, most of them with local programming, only one hour of programming was found to be sexually explicit. In Cambridge less than one hour out of 15,000 hours of programming CCTV has run in the past five year may have been affected by the Act. Multiply that ratio by the thousands of hours of local programming seen every month on cable systems in the country, we end up with a tremendous effort for virtually no programming of this nature. And to be honest, community access channels do not have the viewership of network channels, so that the odds of viewers seeing obscene programming is further minimized.

If there is no significant amount of obscene programming then what is wrong with a few rules. By creating a set of burdensome rules such as insurance bonding of producers, pre-screening of programming, etc. we will all be looking for a needle in a rather large haystack. Clearly, a chilling effect on all types of programs will take place if sufficient road blocks to making programs are erected. Why not take all of the effort necessary to implement these regulations and use the energy to make for more and better programs.

Therefore, CCTV feels that there simply is not a problem which needs to be fixed. We urge the Commission to address the concern of the Congress by creating mechanisms which allow for the free flow of ideas, opinions, and images. The party responsible for the program should be the owner of the program and not the cable operator or the access entity.

Respectfully submitted,



Irwin Hipsman
Executive Director
Cambridge Community Television
One Kendall Square B-400
Cambridge, MA 02139
617-225-2500